

PREVAILED

Roll Call No. _____

FAILED

Ayes _____

WITHDRAWN

Noes _____

RULED OUT OF ORDER

HOUSE MOTION _____

MR. SPEAKER:

I move that Senate Bill 18 be amended to read as follows:

- 1 Page 21, delete lines 7 through 16.
- 2 Page 22, delete lines 19 through 42.
- 3 Page 23, delete lines 1 through 2.
- 4 Page 23, line 16, delete "Upon request of the prosecuting attorney,".
- 5 Page 23, delete lines 17 through 18.
- 6 Page 23, line 25, delete "or" and insert ",".
- 7 Page 23, line 25, after "indictment" insert "**or certify the case to the**
- 8 **attorney general**".
- 9 Page 23, line 34, delete "request that the governor recommend" and
- 10 insert "**certify the matter to the attorney general, provide the**
- 11 **attorney general with the materials described in subsection (a), and**
- 12 **request that the attorney general seek appointment as a special**
- 13 **prosecuting attorney under IC 4-6-2.5 to prosecute the matter.**".
- 14 Page 23, delete lines 35 through 42.
- 15 Delete pages 24 through 25.
- 16 Page 26, delete line 1.
- 17 Page 26, delete lines 37 through 42, begin a new paragraph and
- 18 insert:
- 19 "SECTION 16. IC 4-6-2.5 IS ADDED TO THE INDIANA CODE
- 20 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
- 21 UPON PASSAGE]:
- 22 **Chapter 2.5. Duties as Special Prosecuting Attorney**
- 23 **Sec. 1. If a criminal matter is certified to the attorney general**
- 24 **by:**
- 25 **(1) a prosecuting attorney under IC 33-39-1-5.5; or**

1 (2) the inspector general under IC 4-2-7-7;
 2 the attorney general may prosecute the criminal matter as a special
 3 prosecuting attorney in accordance with this chapter.

4 Sec. 2. Upon request of a prosecuting attorney, the attorney
 5 general may participate on behalf of the state in a criminal trial.

6 Sec. 3. (a) If a prosecuting attorney or the inspector general
 7 certifies a criminal matter to the attorney general under IC 4-2-7-7
 8 or IC 33-39-1-5.5 and the attorney general finds that there may be
 9 probable cause to believe that a person identified in the certified
 10 criminal matter has violated a criminal statute, the attorney
 11 general may request that the governor recommend the attorney
 12 general be appointed as a special prosecuting attorney so that the
 13 attorney general may prosecute the matter addressed in the
 14 certification.

15 (b) The governor may recommend the attorney general be
 16 appointed as a special prosecuting attorney if:

17 (1) the criminal matter was properly certified to the attorney
 18 general by a prosecuting attorney under IC 33-39-1-5.5 or the
 19 inspector general under IC 4-2-7-7; and

20 (2) the governor finds that the appointment of the attorney
 21 general as a special prosecuting attorney is in the best
 22 interests of justice.

23 (c) If the governor has recommended the appointment of the
 24 attorney general as a special prosecuting attorney, the attorney
 25 general shall file a notice with the chief judge of the court of
 26 appeals, stating:

27 (1) that the governor has recommended that the attorney
 28 general be appointed as a special prosecuting attorney;

29 (2) the name of the county in which the crime that the
 30 attorney general intends to prosecute is alleged to have been
 31 committed; and

32 (3) that the attorney general requests the chief judge to assign
 33 a court of appeals judge to determine whether the attorney
 34 general should be appointed as a special prosecuting attorney.

35 Upon receipt of the notice, the chief judge of the court of appeals
 36 shall assign a judge of the court of appeals from a district other
 37 than the district in which the crime is alleged to have been
 38 committed to determine whether the attorney general should be
 39 appointed as a special prosecuting attorney.

40 (d) The attorney general shall file a verified petition for
 41 appointment as a special prosecuting attorney with the court of
 42 appeals judge assigned under subsection (c). In the verified
 43 petition, the attorney general shall set forth why the attorney
 44 general should be appointed as a special prosecuting attorney. The
 45 attorney general may support the verified petition by including
 46 relevant documents, transcripts, or written statements in support

1 of the attorney general's position. The attorney general shall serve
2 a copy of the verified petition, along with any supporting evidence,
3 on the prosecuting attorney to whom the case was originally
4 certified.

5 (e) The prosecuting attorney shall file a verified petition in
6 support of or opposition to the attorney general's verified petition
7 for appointment as a special prosecuting attorney not later than
8 fifteen (15) days after receipt of the attorney general's verified
9 petition for appointment as a special prosecuting attorney.

10 (f) Upon a showing of particularized need, the court of appeals
11 judge may order the verified petitions filed by the attorney general
12 and the prosecuting attorney to be confidential.

13 (g) After considering the verified petitions, the court of appeals
14 judge may appoint the attorney general as a special prosecuting
15 attorney if the judge finds that:

16 (1) the criminal matter was properly certified to the attorney
17 general under IC 4-2-7-7 or IC 33-39-1-5.5; and

18 (2) appointment of the attorney general as a special
19 prosecuting attorney is in the best interests of justice.

20 In making its determination under this subsection, the court of
21 appeals judge shall consider only the arguments and evidence
22 contained in the verified petitions.

23 (h) Except as provided in subsection (j), an attorney general
24 appointed to serve as a special prosecuting attorney has the same
25 powers as the prosecuting attorney of the county. However, the
26 court of appeals judge shall:

27 (1) limit the scope of the attorney general's duties as a special
28 prosecuting attorney to include only the investigation or
29 prosecution of a particular case or particular grand jury
30 investigation, including any matter that reasonably results
31 from the investigation, prosecution, or grand jury
32 investigation; and

33 (2) establish the length of the attorney general's term as a
34 special prosecuting attorney.

35 If the attorney general's investigation or prosecution acquires a
36 broader scope or requires additional time to complete, the court of
37 appeals judge may at any time increase the scope of the attorney
38 general's duties or establish a longer term for the attorney general
39 to serve as a special prosecuting attorney.

40 (i) An attorney general appointed to serve as a special
41 prosecuting attorney may appoint one (1) or more deputy attorneys
42 general who are licensed to practice law in Indiana to serve as a
43 special deputy prosecuting attorney. A deputy attorney general
44 appointed to serve as a special deputy prosecuting attorney is
45 subject to the same statutory restrictions and other restrictions
46 imposed on the attorney general who is appointed to serve as a

special prosecuting attorney, but otherwise has the same powers as a deputy prosecuting attorney.

(j) An attorney general appointed to serve as a special prosecuting attorney may bring a criminal charge only after obtaining an indictment from a grand jury. An attorney general appointed to serve as a special prosecuting attorney may not bring a criminal charge by filing an information.

(k) The attorney general or a deputy attorney general who is licensed to practice law in Indiana may serve as a special deputy prosecuting attorney under IC 33-39-2-6."

Page 27, delete lines 1 through 6.

Page 53, delete lines 9 through 14, begin a new paragraph and insert:

"SECTION 31. IC 33-39-1-5.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 5.5. If the inspector general has certified a criminal matter to the prosecuting attorney under IC 4-2-7-7, not later than one hundred eighty (180) days after receipt of the certification, the prosecuting attorney shall:**

(1) prosecute the case;

(2) elect not to prosecute the case and refer the matter back to the inspector general; or

(3) certify the case to the attorney general with the request that the attorney general seek appointment under IC 4-6-2.5 as a special prosecuting attorney and prosecute the case."

Page 53, line 18, delete "IC 4-2-7-7." and insert "IC 4-6-2.5".

Page 55, line 20, delete "inspector general" and insert "**attorney general**".

Page 55, line 20, after "deputy" delete "inspector" and insert "**attorney**".

Page 55, delete lines 23 through 42.

Delete pages 56 through 58.

Page 59, delete lines 1 through 32.

Renumber all SECTIONS consecutively.

(Reference is to ESB 18 as printed March 11, 2005.)

Representative Welch